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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

No. 589

TEXAS AND NEW ORLEANS RAILROAD COMPANY, ET AL,
*Petitioners,*

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL,
*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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*To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Texas and New Orleans Railroad Company[1] (herein called T&NO), Missouri Pacific Railroad Company (herein called MoPac) and The Texas Mexican Railway Company (herein called TexMex) pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

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[1] Effective October 31, 1961, under authority granted by the Interstate Commerce Commission in FD21261, T&NO was merged with Southern Pacific Company, a Delaware Corporation which succeeded to the rights, and assumed the obligations of T&NO. For convenience, Southern Pacific Company will be referred to herein as T&NO.

## OPINIONS BELOW

The opinion of the Court of Appeals is reported at 307 F. 2d 151, and is printed as Appendix A hereto, *infra*, pp. 1a-27a. The opinion of the District Court for the Southern District of Texas, Houston Division, is reported at 197 F. Supp. 348, and is printed as Appendix B, *infra*, pp. 29a-39a.

## JURISDICTION

Judgment of the Court of Appeals was entered on July 6, 1962. Petition for rehearing was denied with opinion on August 17, 1962. Jurisdiction rests on 62 Stat. 928, 28 U.S.C., Sec. 1254.

## QUESTIONS PRESENTED

1. Whether a federal district court has jurisdiction to protect the primary jurisdiction of the Interstate Commerce Commission when a union strikes to prevent a railroad from complying with a Commission order?

2. Whether Secs. 5 and 16(7) of the Interstate Commerce Act pre-empt, repeal, or must be accommodated with, the Norris-LaGuardia Act so that a federal court would have jurisdiction to enjoin a strike by a union representing railroad employees, if the purpose of the strike is to compel the railroads to operate in a manner different from that approved and authorized by the Interstate Commerce Commission under the Interstate Commerce Act,[2] after finding that said operation was fair, reasonable and in the public interest?

3. Whether the attempt to compel the railroads to operate in a manner different from that approved and authorized by the Commission constitutes a labor dispute within the meaning of the Norris-LaGuardia Act.

4. Whether the Railway Labor Act requires the railroads to obtain union permission to put into effect operational changes approved by the Interstate Commerce Commission?

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[2] The Interstate Commerce Act, as amended, will sometimes be referred to herein as "the Act," and the Interstate Commerce Commission will sometimes be referred to as "the Commission."

## STATUTES INVOLVED

1. Interstate Commerce Act, as amended by the Transportation Act of 1940, as amended: 54 Stat. 899, *et seq.*, 49 U.S.C., Secs. preceding 1, 5(2)(a, b, c, f), 5(11), 16(6), 16(7), 17(11).

2. Railway Labor Act, as amended, 48 Stat. 1191, 1197, 45 U.S.C., Secs. 153 (i, j, k, l), 156.

3. Norris-LaGuardia Act, 47 Stat. 70 *et seq.*; 29 U.S.C., Secs. 101, 104, 108.

The complete text of the above cited statutes appears in Appendix C, *infra*, page 41a-48a. Supreme Court Rule 23(1)(d).

## STATEMENT

Corpus Christi, Texas, is a port city served by three railroads, T&NO, TexMex and MoPac. For some thirty years a bascule drawbridge spanning the mouth of the harbor was the only means by which T&NO entered and left the City (Tr. 82). In time, this municipally-owned bridge became obsolete (Tr. 81-83). In June, 1953, the Secretary of the Army, pursuant to his police powers over navigable waters, declared that this bascule bridge was an unreasonable obstruction to vessels (Tr. 84-85). The City, along with Nueces County and the Nueces County Navigation District, also determined that the bridge was not adequate for the vehicular traffic, although it was still satisfactory for railroad purposes (Tr. 83). Plans were made to replace the bascule bridge with a modern, high-level vehicular bridge (Tr. 84).

Although removal of the bascule bridge would result in T&NO's being cut off from its yards and its access to shippers in the port area, the railroad could hardly oppose the civic groups' efforts to modernize (Tr. 80-87). Therefore, efforts were made to effect an accommodation.

Representatives of the City of Corpus Christi, the County of Nueces, the Nueces County Navigation District, T&NO, TexMex and MoPac devised a suitable new operation plan based upon a new railroad bridge to be built some miles inland. T&NO, TexMex and MoPac agreed that certain tracks in and around the city owned by each respective railroad could be used by any of the railroads through the terminal association. This association would deliver loaded cars to yards where each railroad could receive them, and then the cars would be moved out over the respective lines (Tr. 28-36, 85-87; Exhibit 1, p. 44 (Art. VI); p. 45). T&NO and TexMex also agreed to relocate their yard facilities on the outskirts of the City and agreed to a joint terminal operation (Tr. 28-36; Exhibit 1, p. 44 (Art. II); Exhibit 11).

Of course, no change in the operation of the railroads could be made without the prior approval of the Interstate Commerce Commission, that agency having exclusive jurisdiction. (54 Stat. 908; 49 U.S.C. §5(11)) Accordingly, the railroads petitioned the Commission for approval of the new operation in accordance with the agreements made by the local governing bodies and the railroads (Tr. 264, 58-59; Exhibit 1).

A copy of the primary agreement, which formed the basis for the application to the Commission, was furnished to respondent union shortly after it was executed and months before the application was filed (Tr. 256). Respondent union, like any union in a comparable position, had the absolute right to intervene in this proceeding before the Commission (54 Stat. 916, 49 U.S.C. Sec. 17(11)). By such intervention, respondent union would have been entitled to show, if such had been the case, that the proposed change in the method of operation was not in the public interest or not in the interest of the employees involved and thus should not be approved (54 Stat. 906,

49 U.S.C. Sec. 5(2)(c)). Furthermore, respondent union would have been entitled to persuade the Commission to afford labor protection provisions in excess of the minimum required by statute (54 Stat. 905, 49 U.S.C. Sec. 5(2)(f)). Respondent union has intervened in similar proceedings many times in the past,[3] but in this instance, it, along with the other unions affected, chose to remain aloof, registering instead only a general protest (Tr. 59, Supp. 3).

After considering the application, the Commission decided that the change was in the public interest and entered an order approving the new operation (Tr. 39, 40-43; Exhibit 10). Before doing so, however, the Commission held:

> "No facts have been disclosed indicating that railroad employees will be adversely affected by any of the proposals involved herein. However, all the authorizations herein will be made subject to the same conditions for the protection of employees adversely affected by any part of the transactions involved in any of these proceedings as prescribed in *Oklahoma Ry. Co. Trustee's Abandonment, etc.*, 257 I.C.C. 177." (Tr. 38, 364, Exhibit 10).

The effect of this order, entered despite the refusal of the unions to intervene, was as follows (See 257 I.C.C. 177, 192, 197-201):

1. The railroads were required to make economically whole, for a period of four years from the effective date of the order, any employee placed in a worse position with respect to compensation or working conditions or who might be displaced entirely.
2. If an employee had not worked for the railroad as long as four years, then he would be entitled to

[3] See, e.g., Brotherhood of Railroad Trainmen v. Baltimore & Ohio Ry., 331 U.S. 519.

the benefits noted in paragraph 1 for a period equal to the time that he had been so employed.

3. The railroads were required to furnish all the affected employees with the same fringe benefits furnished regular employees, including transportation, hospitalization and pensions.

4. The railroads were required to pay moving expenses, and to indemnify any employee for any loss on the sale of his home, or the breaking of any leases or contracts of sale, if the employee were required to move his place of employment with the railroads as a result of the change in operation.

However, the Commission's finding of no adverse effect on employees was borne out since the new operation did not result in the elimination of any Trainmen jobs (Tr. 131 133), and there is no evidence that any such employee suffered any reduction in earnings.

After the Commission's order was handed down, the City cut the bascule bridge, and the railroads had no alternative but to operate in the manner approved by the Interstate Commerce Commission. The Federal District Court specifically found that from the time the City cut the bridge, the petitioners have operated in accordance with the authority granted by the Commission (Tr. 287-288).

Even before the application was presented to the Interstate Commerce Commission, negotiations had been opened by petitioners with the various unions in order to adjust the rates, rules and working conditions in the existing collective bargaining agreements to the proposed change in operations (Tr. 265-266). The collective bargaining agreements were modified to the satisfaction of every Railroad Brotherhood except the Trainmen (Tr. 265-266). The railroads invoked

the services of the National Mediation Board, which proposed arbitration, but the Trainmen declined (Tr. 63, 225-226). Notwithstanding the labor protection provisions provided by the Interstate Commerce Commission, notwithstanding the fact that no jobs were lost or pay affected, and notwithstanding the railroads' continued willingness to bargain on all rates, rules and working conditions applicable to the new method of operation, the Trainmen threatened to strike unless the railroads abandoned the method of operations approved by the Interstate Commerce Commission (Tr. 288). The Trainmen also threatened to strike over alleged "time claims" (arbitrary payments for time not worked) rather than submit these claims to compulsory arbitration as required for minor disputes by the Railway Labor Act (Tr. 289).

Relying on the adjudication by the Commission that the change in method of operation was in the public interest (Tr. 39, 40-43; Exhibit 10), and believing that the Interstate Commerce Commission had exclusive, plenary, and final jurisdiction to determine what changes in method of operation, if any, would be made, the railroads petitioned the Federal District Court for relief because of fear of the consequences of a strike by the Trainmen (Tr. 266). Jurisdiction was predicated on 28 U.S.C. Secs. 1331, 1332, 1337, 2201 and 29 U.S.C. Sec. 185.

After a hearing, the Federal District Court made this finding:

> "(3) *The strike* which the Brotherhood of Railroad Trainmen called against the three plaintiffs to start on Monday, July 10, 1961, *was for the purpose of compelling said plaintiffs to make agreements providing for operations different from those authorized by the said Commission in its Order* of November 16, 1960, and particularly in the following respects:
>
> (a) To require Texas and New Orleans Railroad Company and The Texas Mexican Railway Company to conduct separate operations, including separate

Corpus Christi Terminal Association (C.C.T.A.) operations, in the Corpus Christi Terminal instead of joint operations.

(b) To require Texas and New Orleans Railroad Company, as distinguished from C.C.T.A. to switch its former yards and industries in the Hughes Street-Taneahua Industrial area. In order to reach said tracks, yards and industries as an individual railroad, it would be necessary for Texas and New Orleans Railroad Company to operate over trackage owned by Missouri Pacific Railroad Company. Texas and New Orleans Railroad Company is permitted to use said trackage for reaching the area in question when operating the C.C.T.A., but is not permitted to use Missouri Pacific track for the purpose of reaching the area in question as an individual railroad.

(c) *To require payment by the three plaintiffs to their respective employees of various time claims* which have been filed by said employees represented by the Brotherhood of Railroad Trainmen against the three plaintiffs because of the changes in operations which occurred on, and have continued since, November 18, 1960, at Corpus Christi, Texas. At the time of the trial said time claims against the three plaintiffs were in excess of $500,000.00. *When properly processed by the Brotherhood of Railroad Trainmen under the provisions of the Railway Labor Act, these time claims will be properly referrable by the parties involved to the National Railroad Adjustment Board for decision.*" (Emphasis supplied.) (Tr. 288).

Nevertheless, the trial court denied the injunction, holding that "the Norris-LaGuardia Act bar(s) relief against a strike to prevent a railroad's complying with a contract approved by the . . . Commission pursuant to 49 U.S.C.A. Sec. 5(2)" (Tr. 271). However, the trial court granted an injunction pending appeal.

The Court of Appeals, Fifth Circuit, affirmed the judgment of the trial court. Issuance of mandate has been stayed pending action by this Honorable Court.

At all times material hereto, including the present, petitioners have been willing to negotiate with the Trainmen concerning rates, rules and working conditions applicable to the new operations approved by the Commission, which operations were necessarily inaugurated when the tracks leading to the bascule bridge were cut by the City. The failure of respondent union and petitioners to reach an agreement has been solely because of the Trainmen's insistence that petitioners make agreements providing for operations different from those found by the Commission to be fair and reasonable and in the public interest.

## REASONS FOR GRANTING THE WRIT

As stated by the Court of Appeals (Appendix A, *infra*, p. 5a):

> "This suit presents a three-way conflict between major pieces of Federal Legislation; surprisingly, it appears to be a case of first impression, although all three statutes have been on the books for some . . . years . . ."

The three major pieces of federal legislation are the Interstate Commerce Act, the Railway Labor Act, and the Norris-LaGuardia Act.

The Court of Appeals concluded correctly that the basic issue in the case was the "Commission's power under Section 5 of the . . . Act and the meaning to be given to the language of Section 5(11) that the Commission's authority is 'exclusive and plenary.'" The Court then said (Appendix A, *infra*, p. 12a):

> "This pits the transportation policy of Section 5 . . . against that of Norris-LaGuardia. If it should be de-

termined that the Commission's authority under Section 5 is being frustrated by application of Norris-LaGuardia to the present suit, we would have to conclude that Norris-LaGuardia was pre-empted by section 5(11) even though section 5 is not labor legislation. The problem is by no means easy."

First, the Court erred in concluding that Section 5 of the Transportation Act of 1940, amending the Interstate Commerce Act, is not labor legislation. President Roosevelt, himself, initiated the Transportation Act of 1940, which contained Section 5(2)(f). After obtaining the recommendations of the Committee of Six, three representatives of the railroads and three of railroad labor, the President placed the legislation in the care of Senators Wheeler, Truman and Minton and Representative Lea.[4] An announced purpose of this legislation was to aid labor.[5] As Senator Wheeler himself said in an interchange with the representative of the Brotherhood of Railroad Trainmen, "we [the Congress] are changing [the national transportation policy] in favor of labor and to help labor."[6]

In line with this statement, Congress gave the Commission authority to issue orders under Section 5 binding upon railroad employees only after providing for them the following adequate protection:

1. Unions representing employees have the absolute right to become parties to proceedings which affect the employees. Section 17(11) of the Act; *Brotherhood of Railroad Trainmen* v. *Baltimore & Ohio Ry.*, 331 U.S. 519.

[4] 86 Cong. Rec. 11269, 11270; 86 Cong. Rec. 5864-5. See 84 Cong. Rec. 9750. See Appendices D and E, *infra*.

[5] 54 Stat. 899; 49 U.S.C. preceding §1.

[6] Hearings on S.2009 before the Senate Committee on Interstate Commerce, 76th Cong., 1st Sess. 402 (1939).

2. The Commission is required to consider the effect of a proposed transaction on the employees involved, Section 5(2)(c) of the Act, and is required to prescribe protection for employees adversely affected by an authorized transaction, Section 5(2)(f) of the Act;

3. Unions have the right to negotiate with railroads concerning compensation, rules and working conditions to apply to the new operations resulting from approved transactions.

The legislative history of Section 5(2)(f) (See Appendix D, *infra*, p. 49a-58a) requiring the Commission to prescribe specified minimum protection for employees adversely affected by an approved transaction, shows clearly that all who participated in its enactment understood that they were evolving labor legislation and that railroad employees would be bound by Commission orders under Section 5. Mr. Harrison, testifying as a labor representative of the Committee of Six, said:

> "Labor has indicated its willingness to cooperate by saying that where it can be shown to be in the public interest, mergers ought to be effected and then we are making a sacrifice . . ."[7]

This point was put in even blunter fashion by Mr. McGrath, testifying for the Trainmen:

> "An acceptance by railroad labor of the provisions concerning unification which are now proposed cannot but be construed as a tacit agreement on the part of railroad employees that mergers, consolidations, coordinations, and so forth, may be freely made, so long

[7] Hearings on H.R. 2531 and H.R. 4862 before the House Committee on Interstate and Foreign Commerce, 76th Cong., 1st Sess. 1292.

> as the interests of labor are 'considered' and some sort of supposed protection given to their interests . . ."[8]

The only questions giving rise to debate were: (1) would the Commission be authorized to approve transactions which affected employees adversely, and (2) if so, how much protection should be given the employees. It is highly significant that the proposed Harrington amendment, which the Trainmen sought unsuccessfully to have included in Section 5, contained a provision that the Commission should not approve any transaction which would result "in the impairment of existing employment rights of . . . employees" (Appendix D, infra, p. 54a). This proposal was defeated, Congress refusing to place this drastic limitation on the authority of the Commission. During the final debate in the House on the passage of the bill which became the Transportation Act of 1940 containing what is now Section 5(2)(f), Mr. Wolverton said:

> "[I]t was recognized that the real intent of the sponsors [of the original proposals] was to save the railroad employees from being suddenly thrust out of employment as the result of any consolidation or merger entered into . . . . In fact, the provisions contained in the original bill had the approval of 20 out of the 21 railroad brotherhoods. And, it is significant in this connection that the one brotherhood [the Trainmen] which did not agree to our language had never asked for anything other than that the entire consolidation provision be left out of the bill *and the matter be left at this time as a matter for collective bargaining.*" (Appendix D, *infra* p. 57a-58a) (Emphasis Supplied).

The effect of the Court of Appeals' opinion is to make transactions covered by Section 5 matters to be left for collective bargaining. This is what the Trainmen failed to

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[8] Hearings on H.R. 2531 and H.R. 4862 before the House Committee on Interstate and Foreign Commerce, 76th Cong., 1st Sess. 1292.

obtain from Congress in 1940 when the present federal transportation policy was enacted. Thus, the Court of Appeals has given the Trainmen, through judicial construction, what they failed to obtain through legislative enactment.

But, whether Section 5 is labor legislation or legislation governing administrative power, the Court of Appeals erroneously concluded that there is no conflict between Section 5 of the Act and Norris-LaGuardia such as to require repeal of one or accommodation of the two. This conclusion was based upon three distinct errors.

First the Court of Appeals erred by failing to distinguish between (a) *methods of operation*, which require Commission approval and thereafter are not a proper subject for collective bargaining; and (b) *rates of pay, rules and working conditions*, concerning which the Trainmen had and have the right to negotiate with petitioners. In this connection, there can be no doubt that the present dispute is not over the contents of a collective bargaining agreement, but rather over the contents of an order of the Commission. Petitioners do not now, and never have, disputed the right of the Trainmen to bargain on rates of pay, rules, and working conditions incident to the new operations. On the other hand, the Court of Appeals expressly recognized that the change in operations demanded by the Trainmen is a matter which,

> ". . . both on the law and the facts, if litigable at all, is within the primary jurisdiction of the Interstate Commerce Commission." (Appendix A, *infra*, at page 19a-20a.)

The failure of the court to grasp this distinction clearly appears from its repeated statements that petitioners used

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[9] See cases cited at note 13, *infra*.

the Commission order to establish, unilaterally, a new collective bargaining agreement. This simply is not so. The application presented to the Commission was solely concerned with the matter over which the Commission has exclusive and plenary jurisdiction, namely the proposed change in operations. This application did not contain a single provision of a new labor agreement.

Secondly, because of its failure to grasp the distinction just noted, and because of its notion that the employees had, before the Commission, only a "weak voice of protest," the Court of Appeals was led to ignore the specific language of Section 16(7) of the Interstate Commerce Act:

> "It shall be the duty of every common carrier, its agents *and employees*, to observe *and comply* with such orders [of the Commission] so long as the same shall remain in effect." (Emphasis Supplied.)

If this statute has any meaning at all, the order of the Commission in this case is binding upon the employees as well as upon the railroads involved. When the City cut the tracks over the bascule bridge, the railroads and the railroad employees had no alternative but to operate in accordance with the lawful order of the Commission. Furthermore, it would be physically impossible to continue to operate in accordance with the prior plan of operations.

As has been noted before, a labor union has the absolute right to intervene before the Commission to see to it that labor's interests are protected. This provision for intervention was inserted at the specific request of labor. It is significant that in his testimony on this point before the House Committee, the Trainmen's General Counsel, Mr. McGrath, stated:

> "Every consolidation or co-ordination is bound to have an adverse effect on railroad labor, to a greater or less extent, depending upon its magnitude. We are

> opposed to any arrangement which may keep labor or the public in the dark until after the damage resulting from unifications has been done."[10]

In furtherance of the policy of giving labor an absolute right to intervene, Congress provided that the Commission would be bound to take into account the effect of a proposed order on the interests of labor and to require specific measures for the protection of labor (Section 5(2)(e,f)). Furthermore, Congress provided that if labor is not satisfied with the protection afforded by the Commission, labor is free to negotiate for still greater protection (Section 5(2)(f)). In the light of these carefully prescribed safeguards, Section 16(7) stands as an integral and necessary part of the orderly processes established by the Act, and must be enforced.

Finally, the court erred in concluding that the employees involved had lost $500,000 in wages because of the change in operations. The fact is that the employees did not lose $500,000 or any other amount in wages as a result of the changed operations. If any employee had lost his job or suffered a reduction in pay as a result of the change in operations, he would be made whole for a period of four years (or for such lesser time as he had been employed) under the Oklahoma conditions prescribed by the Commission under Section 5(2)(f) of the Act. The Court of Appeals' reference to more than $500,000 of lost wages resulted from a misconception of the time claims filed by the employees which claims totaled more than $500,000 at the time of trial. These claims constituted minor disputes under the Railway Labor Act and were claims for penalties, of a day's pay each, for work *not performed*, and

[10] Hearings on H.R. 2531 and H.R. 4862 before the House Committee on Interstate and Foreign Commerce, 76th Cong., 1st Sess. 1293.

were in addition to the wages paid the employees for services *actually rendered*. These penalty claims have no relation to what an employee earns now and what he earned before the bascule bridge was cut (Tr. 193, 165-168).

The questions involved herein are substantial and important. Although Congress vested in the Commission "exclusive and plenary" authority under Section 5(11) of the Interstate Commerce Act to approve and authorize the new operations which petitioners put in effect when the tracks to the bascule bridge were cut, and although those operations were approved and authorized by the Commission, the Court of Appeals held that the order of the Commission is not binding on the Trainmen and the employees represented by them, and they are free to strike to compel a change in said operations. *This decision nullified the Commission's exclusive jurisdiction.* Why require the Commission to find that a proposed transaction is fair and reasonable and in the public interest, and why exempt the railroads and employees from the antitrust laws, the Railway Labor Act,[11] and other restrictions in carrying out a transaction, if a union can nullify an approved transaction through economic pressure? The Court of Appeals recognized that its decision placed petitioners "in an insol-

[11] Chicago and Northwestern Ry. v. Brotherhood of Locomotive Engineers, 202 F. Supp. 277, 284 (D.C. Iowa). Before adopting Section 5 (11) in its present form, Congress had before it H.R. 2531, which provided in part that while in carrying out orders of the Commission railroads were relieved of "restraints or prohibitions of law, State or Federal," nevertheless "[N]othing herein shall be construed to repeal, amend, suspend or modify any of the requirements of the Railway Labor Act, as amended, or the duties and obligations imposed thereunder or through contracts entered into in accordance with the provisions of said Act" (Appendix E, *infra*, p. 60a). Congress refused to provide that a transaction approved by the Commission could be carried out only in compliance with all of the requirements of the Railway Labor Act.

uble dilemma" of either making operational changes demanded by the Trainmen, for which petitioners could be prosecuted, "or hopelessly to sit out a crippling strike" (Appendix A, *infra*, p. 18a).

In effect, the Court of Appeals concluded that Congress meant nothing by Section 5 of the Interstate Commerce Act and really intended to leave all transactions covered thereby to negotiations between railroads and unions without interference from the Interstate Commerce Commission representing the public interest.

A principal purpose of the Transportation Act of 1940, as well as its predecessors, was to improve the economic health of the nation's transportation system by fostering the consolidation and co-ordination of the many railway systems in order to produce operating economies, while at the same time protecting the interests of railroad employees.[12] The Court of Appeals' decision frustrates that purpose, and nullifies the purpose and effectiveness of the Commission. Further, it substitutes economic warfare for the orderly administrative processes provided by Congress, and gives unions the right, after participating as parties before the Commission and having had their day in court, to ignore both the Commission's decision and the public interest served thereby.

The result in the instant case is all the more egregious since the Trainmen did not even bother to appear before the Commission to show that the change was not in the public interest or that labor was not adequately protected. Instead, after the order had been entered, and the City

[12] "It is hereby declared to be the national transportation policy of the Congress . . . to promote . . . economical, and efficient service and foster sound, economic conditions in transportation . . . and to encourage fair wages and equitable working conditions. . . ." 54 Stat. 899, 49 U.S.C. preceding §1.

had cut the bridge, the Trainmen threatened to strike unless the Commission's order was disobeyed. At the very least, this action constitutes a collateral attack on the jurisdiction of the Commission to regulate the railroads.

The Court of Appeals agreed "that Norris-LaGuardia was pre-empted by Section 5(11)" if "the Commission's authority under Section 5 is being frustrated by the application of Norris-LaGuardia to the present suit." The present case presents as clear a case as may be conceived of frustration of Commission authority and congressional intent. This Honorable Court has not been slow to reconcile Norris-LaGuardia with other important federal legislation when such action was necessary to preserve an important federal policy clearly enunciated by Congress.[13] Such reconciliation is necessary here to preserve the policy announced in the Interstate Commerce Act of giving the Commission "exclusive and plenary" authority over Section 5 transactions.

If the public interest is to be served, if the jurisdiction of the Commission is to be preserved, if the intent of Congress to channel these matters into orderly administrative processes is to be followed, then the federal courts must necessarily have jurisdiction to grant the relief requested by petitioners. If not, then an order of a federal regulatory agency can be obeyed only to the extent permitted by a union.

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[13] Brotherhood of Railway Trainmen v. Chicago River & Indiana Ry., 353 U.S. 30; Graham v. Brotherhood of Locomotive Firemen and Enginemen, 338 U.S. 232; Textile Workers v. Lincoln Mills, 353 U.S. 448; Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U.S. 210; Syres v. Oil Workers International Union, 350 U.S. 192; Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768.

## CONCLUSION

The questions presented by this petition are of public importance. Certiorari should be granted.

Respectfully submitted,

TOM M. DAVIS

ELMORE H. BORCHERS

PALMER HUTCHESON, JR.